

Sec. 5. [Time and length of sessions; items considered in even-numbered years.]

A. Each regular session of the legislature shall begin annually at 12:00 noon on the third Tuesday of January. Every regular session of the legislature convening during an odd-numbered year shall remain in session not to exceed sixty days, and every regular session of the legislature convening during an even-numbered year shall remain in session not to exceed thirty days. No special session of the legislature shall exceed thirty days.

B. Every regular session of the legislature convening during an even-numbered year shall consider only the following:

- (1) budgets, appropriations and revenue bills;
- (2) bills drawn pursuant to special messages of the governor; and
- (3) bills of the last previous regular session vetoed by the governor.

(As amended November 5, 1940, November 5, 1946, and November 3, 1964.)

Cross references. — As to calculation of end of legislative session, see 12-2A-7 NMSA 1978.

The 1940 amendment, which was proposed by H.J.R. No. 12 (Laws 1939) and adopted at the election held on November 5, 1940, with a vote of 31,490 for and 28,415 against, amended this section, which formerly had read: "The first session of the legislature shall begin at twelve o'clock, noon, on the day specified in the proclamation of the governor. Subsequent sessions shall begin at twelve o'clock, noon, on the second Tuesday of January next after each general election. No regular session shall exceed sixty days, except the first, which may be ninety days, and no special session shall exceed thirty days," to read: "Each regular session of the legislature shall begin at 12:00 noon on the second Tuesday of January next after each general election and shall remain in session not to exceed sixty days. Such session shall be divided into a first term of thirty days and a second term of thirty days, with a recess of thirty days between such terms. During the first term, all bills to be considered at the session shall be introduced, read not more than twice by title or in full, printed and referred to the appropriate committee. No bill shall be placed upon its third reading or finally passed during its first term, except appropriations for expenses of the legislature and such measures as shall be submitted for immediate legislative action by the governor accompanied by a special message setting forth the facts making such action necessary for the general welfare.

"During the second term of such session, all bills introduced at the first term shall stand for final action at the second term. Notwithstanding any provision of any section of this constitution to the contrary, no bill shall be introduced at the second term except appropriations for expenses of the legislature, the general appropriations bill, bills to provide for the current expenses of the government, committee substitutes for bills introduced at the first term and such measures as may be submitted by the governor, accompanied by a special message showing necessity for legislative action. The members of the legislature shall be allowed their mileage for attending both the first and second terms of the legislature. No special session of the legislature shall exceed thirty days."

The 1946 amendment, which was proposed by H.J.R. No. 15 (Laws 1945) and adopted at the general election held on November 5, 1946, with a vote of 15,915 for and 6,925 against, amended the

section to read: "Each regular session of the legislature shall begin at 12:00 noon on the second Tuesday of January next after each general election and shall remain in session not to exceed sixty days. No special session of the legislature shall exceed thirty days."

The 1964 amendment, which was proposed by S.J.R. No. 4, § 1 (Laws 1963) and adopted at the general election held on November 3, 1964, with a vote of 71,499 for and 50,785 against, amended the section to provide that regular sessions would begin on the third Tuesday of January and should remain in session no more than 60 days in odd-numbered years and 30 days in even-numbered years, as should special sessions, and to limit the matters to be considered by regular sessions convening during even-numbered years.

Compiler's notes. — An amendment to this section proposed by S.J.R. No. 3 (Laws 1959), which would have provided for regular sessions of the legislature, was submitted to the people at the general election held on November 8, 1960. It failed to pass because it did not receive the necessary majority.

An amendment to this section proposed by S.J.R. No. 15, § 1 (Laws 1961), which would have provided for regular and special sessions of the legislature, was submitted to the people at the special election held on September 19, 1961. It was defeated by a vote of 20,880 for and 28,178 against.

An amendment to this section was proposed by House Memorial 32 (Laws 1969), which requested the constitutional convention to increase the length of the regular session to be held in odd-numbered years from 60 to 90 days and the session held in even-numbered years from 30 to 45 days. The proposed constitution was submitted to the people at the special election held on December 9, 1969, and defeated by a vote of 59,695 for and 63,331 against.

Election for representatives in congress is general election, and a session of the legislature in 1913 following the general election in November, 1912 was a regular session. 1912-13, Op. Att'y Gen. 47.

Proposed constitutional amendments. — When the legislature acts to put a proposed constitutional amendment before the people, it does so pursuant to Article XIX, not Article IV. Therefore, its authority to consider the subject of constitutional amendments is not affected by the list of legislative topics in subsection B. State ex rel. Chavez v. Vigil-Giron, 108 N.M. 45, 766 P.2d 305 (1988).

The purpose and intent of the framers of the constitution was to limit introduction of amendments to regular as opposed to special sessions, rather than to limit amendments to odd-numbered rather than even-numbered years or to unrestricted rather than restricted regular sessions. State ex rel. Chavez v. Vigil-Giron, 108 N.M. 45, 766 P.2d 305 (1988).

Comparable provisions. — Idaho Const., art. III, § 8.

Iowa Const., amendment 36.

Montana Const., art. V, § 6.

Utah Const., art. VI, § 16.

Wyoming Const., art. III, § 6.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d States, Territories and Dependencies §§ 41, 57, 59.

Power of legislature or branch thereof as to time of assembling and length of session, 56 A.L.R. 721.

81A C.J.S. States §§ 48, 49.

Section delimits time during which legislature may exercise legislative prerogative of enacting laws. *Dillon v. King*, 87 N.M. 79, 529 P.2d 745 (1974).

Law passed too late void. — On direct attack, inquiry may be made into the question of whether or not act or bill purportedly passed by the legislature within constitutional time limitation was in fact passed within that limitation. A law passed in contravention thereof would be void since the legislature would have ceased to be a legislative body by operation of the constitution and would therefore have been without authority to perform any lawmaking function. *Dillon v. King*, 87 N.M. 79, 529 P.2d 745 (1974).

Enrolled bill rule inapplicable. — Enrolled bill rule should not be applicable when a law is challenged as being passed in violation of this section. *Dillon v. King*, 87 N.M. 79, 529 P.2d 745 (1974).

But nondiscretionary and incidental duties not affected. — This section does not restrain legislature from complying fully with definitely imposed nondiscretionary lawmaking duties. It should not be construed to defeat the performance of mandatory incidental duties that are indispensable to effectuate lawmaking power already exercised in due and proper season. *Dillon v. King*, 87 N.M. 79, 529 P.2d 745 (1974).

Calculating effective date of new act. — In calculating effective date of a new act, the day of the event is to be excluded and the last day of the number constituting the specific period is included, so that statute becomes effective at the first moment of the applicable day after the event, such as first moment of ninetieth day after adjournment of legislature which enacted it. *Garcia v. J.C. Penney Co.*, 52 N.M. 410, 200 P.2d 372 (1948).

Meaning of "budget". — The word "budget" may be defined for purposes of this section as a plan or method by means of which expenditures and revenues are controlled for a definite period by some budgetary authority so as to effect a balance between income and expenditures. 1966 Op. Att'y Gen. No. 66-8.

Meaning of "appropriation bill". — An appropriation bill is one which has as its primary and specific aim the setting apart of a certain sum of public money for a specified purpose. 1966 Op. Att'y Gen. No. 66-8.

An "appropriation bill," as defined for purposes of this section, is one which authorizes the expenditure of public moneys and stipulates the amount, manner and purpose of the various items of expenditure. 1966 Op. Att'y Gen. No. 66-8.

Disbursements distinguished. — There is a pronounced distinction between the "appropriation" or setting aside of a sum of money for a particular purpose and the actual "disbursement" of funds to meet the object of such an "appropriation." 1966 Op. Att'y Gen. No. 66-8.

General legislation carrying appropriation not included. — An "appropriation bill," for purposes of this section, does not include an act of general legislation; and a bill proposing such general legislation is not converted into an appropriation bill simply because it has had engrafted upon it a section making an appropriation, or because it carries an appropriation as an incident to the general legislation contained therein. 1966 Op. Att'y Gen. No. 66-8.

Meaning of "revenue bill". — Revenue bill is one which has for its principal purpose the raising of revenue, which fact appears in the bill. 1966 Op. Att'y Gen. No. 66-8.

The term "revenue bill" designates legislation providing for the assessment and collection of taxes to defray the expenses of government. 1966 Op. Att'y Gen. No. 66-8.

Principal object to be production of revenue. — A bill is not a revenue measure if production of revenue is not its principal object, even if production of revenue is incidental to its enforcement; bills enacted pursuant to the state's police power, even if they incidentally levy or impose a tax or license fee, are not revenue bills, but regulatory measures. 1966 Op. Att'y Gen. No. 66-8.

Amendment beyond governor's bill. — Where sole purpose of a bill submitted by the governor in a special message was to provide for the issuance of liquor licenses to public facilities as defined in the bill, an amendment on such bill providing for repeal of the fair-trade law would go far beyond the purpose of the bill as expressed in the governor's message and would be beyond the scope of Subsection B. (2). 1966 Op. Att'y Gen. No. 66-25.

What vetoed bills to be considered. — This section does not require the legislature to consider all bills of the last regular session vetoed by the governor; as to partially vetoed bills, only the portion partially vetoed is to be considered. 1965 Op. Att'y Gen. No. 65-140.

Procedure for overriding veto. — Legislature has power, absent constitutional provisions governing the subject, to decide the procedure to be used in considering a vetoed bill not acted upon before adjournment of first session. 1969 Op. Att'y Gen. No. 69-147.

Legislature has authority to promulgate rules governing procedure for reconsidering vote to override chief executive's veto. 1969 Op. Att'y Gen. No. 69-147.

Legislature has authority to determine whether the house of origin must again vote to override the governor's veto at the next even-year session, when during the odd-year session the house of origin voted to override the veto but the other house either failed to override or failed to take any action before adjournment. 1969 Op. Att'y Gen. No. 69-147.

Scope of limitations. — The limitations in Subsection B of this section applies only to the legislative function of the legislature. 1969-70 Op. Att'y Gen. No. 70-10.

Confirmatory function not limited. — Giving of advice and consent to appointments made by the governor is an administrative function given to the senate as part of the system of checks and balances in our government; it is a power which exists wherever the senate is in session and may be exercised whether the session is a regular-long, regular-short or special one. 1969-70 Op. Att'y Gen. No. 70-10.

Duty to act on appointments. — The senate has a constitutional duty to act on submitted appointments whenever it is next in session. 1969-70 Op. Att'y Gen. No. 70-10.

Provision, by its terms, applies to entire legislature, not to one of its constituent houses. 1969-70 Op. Att'y Gen. No. 70-10.

Limitation controlling. — Limitation on subjects which may be considered at regular sessions convened during even-numbered years, as found in this section, being the later amendment, controls over N.M. Const., art. XIX, § 1 (providing that any amendment may be proposed at any regular legislative session). 1965 Op. Att'y Gen. No. 65-212. See also, 1969 Op. Att'y Gen. No. 69-151.